[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J.

July 16, 1940.

LEE SEOW KUAN v. REX.

[SINGAPORE MAGISTRATE'S APPEAL No. 55 of 1940]

Common Gaming Houses Ordinance (Cap. 30)—S. 2 and S. 4 (c)—Public lottery—Chap Ji Ki.

The Court cannot take judicial notice of the fact that Chap Ji Ki is a lottery within the meaning of the definition in S. 2 of the Common Gaming Houses Ordinance. Unless and until Chap Ji Ki is declared by law to be a lottery within that definition the fact has to be proved in each case.

Cases referred to:—

(1) *Rex v. Lim Kim Watt, Braddell's* Common Gaming Houses p. 160.

(2) *Rex v. Soh Eng Chiang,* 6 M.L.J. 247.

APPEAL.

A. J. Braga for the appellants.
C. H. Koh (D.P.P.) for the Crown.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Terrell Ag. C.J.—The appellants were charged with assisting in the management of a public lottery to wit Chap Ji Ki, an offence punishable under S. 4 (c) of the Common Gaming Houses Ordinance (Cap. 30).

Both accused were convicted and fined respectively $3,000.00 or one year R.I. and $50.00 or one month R.I.

The first ground of appeal raised a point of law namely, that it was not proved that Chap Ji Ki was a lottery. This is the only ground of appeal which it is necessary to consider.

The only evidence on the subject was that of Lee Kim Swee, Detective 56, and I will set out his evidence in full:—

"**LEE KIM SWEE** Det. 56. I am accepted C.J.K. expert in these Courts. On 31-5. I was shown exhibits by L.C. 3920.

P.2.=a torn C.J.K. schedule=$300.00 (approximately owing to tear).

P.5A.=A scheduled C.J.K.=$50.00 (approximately owing to tear).

P.5B.=238 slips Chap Jee Kee=$200.00 (approximately owing to tear).

P.9.=tin with 12 C.J.K. numbers rolled up. Their purpose is for drawing lots.

P.10.=duplicated C.J.K. schedule=$40.00.

No questions."

It will be seen that the witness nowhere states that Chap Ji Ki is a lottery within the meaning of the definition in S. 2 of the Ordinance. Until it is proved that the game is a lottery of the kind referred to in the definition, the presumption from "the possession of a memorandum or record of stakes or wagers in or relating to a lottery" under S. 9 of the Ordinance does not arise. The Court cannot take judicial notice of the fact that Chap Ji Ki is a lottery within the definition (see per Sercombe Smith, J. in *Rex v. Lim Kim Watt & Another*[1]). Unless and until Chap Ji Ki is declared by law to be a lottery within the definition the fact has to be proved in each case.

I have been referred to the case of *Rex v. Soh Eng Chiang*[2] in which I held that the evidence given by this same witness Lee Kim Swee was sufficient to raise the presumption under S. 9. I have examined the record in that case and find that the witness gave a detailed account of the working of Chap Ji Ki lottery from which it could reasonably be inferred that Chap Ji Ki was a lottery within the purview of the definition. From Lee Kim Swee's evidence in the present case no such inference can be drawn. In his grounds of judgment the learned Magistrate clearly took judicial notice of his own personal knowledge of Chap Ji Ki gained through his experience on the Bench. This he was not entitled to do.

The appeal, therefore, must be allowed, the convictions set aside and the sentences quashed.

I would add two observations. First, the charge is incorrectly drawn. Sec. 4 (c) comprises two classes of offences:—

(a) having the care or management of a place kept or used as a common gaming house, and

(b) assisting in carrying on a public lottery.

There is no such offence as "assisting in the management of a public lottery."

Secondly, if the appeal had been dismissed the sentence on the first appellant would certainly have been reduced as being manifestly excessive. To inflict the maximum sentence on a first offender, where there were no aggravating circumstances of any kind, was clearly not justified.

Appeal allowed.